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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 13880 of 2007(B)

PETITIONER:

M.P. VEERENDRA KUMAR, M.P.
PRESIDENT, JANATHA DAL (SECULAR), KERALA STATE COMMITTEE,J.P.BHAVAN,PALAYAM,THIRUVANANTHAPURAM-34

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS:

1. THE STATE ELECTION COMMISSION,
CORPORATION BUILDING, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY.

2. DR. NEELA LOHITHADASAN NADAR,
"MANASI", THIRUMALA, THIRUVANANTHAPURAM.

BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.N.HARIHARAN
SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI.P.A.KUMARAN
SMT.VINEETHA B.
SRI.S.NITHIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 13880/07

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE REPRESENTATION DTD.16.3.207 BY SRI.SURENDRA MOHAN TO ELECTION COMMISSION OF INDIA.

P2. COPY OF THE -DO- DTD.12.4.2007. BY R1.

P3. COPY OF THE COMMUNICATION DTD.16.4.2007 TO THE DIST. RETURNING OFFICER, BY R1.

P4. COPY OF THE COMMUNICATION DTD.7.4.2007 FROM DEVA GOWDA TO R1.

P5. COPY OF THE ORDER DTD.19.4.2007 PASSED BY R1.

P6. COPY OF THE COMMUNICATION DTD.18.4.2007 BY R1 FROM THE ELECTION COMMISSION OF INDIA.

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///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.13880 of 2007

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Dated this the 6th day of June, 2007

J U D G M E N T

In this writ petition, Sri.M.P.Veerendra Kumar claiming to be the president of the Kerala State Committee of the Janatha Dal (Secular) a regional political party, has approached this court challenging Ext.P5 order of the State Election Commission whereby in exercise of its powers under Rule 12(1A) of the Kerala Panchayat (Conduct of Election) Rules 1995 ("the Rules" for short) in supersession of an earlier order, Ext.P3, it has been decided to allot the symbol, "lady farmer carrying paddy on her head' to the candidate of the party of which Sri.H.D.Deva Gowda is the national president. The petitioner seriously disputes that Sri.H.D.Deva Gowda is the national president of the said party. On the other hand, the petitioner claims that Sri.Surendra Mohan is the national president and the Sri.H.D.Deva Gowda has been

removed from the Presidentship of the party.

2. The 2nd respondent claims to be the State president of the Janatha Dal (Secular). He would submit that the question of exercising powers under the said Rule is only if there is a split in the party and that till date there is no decision by any appropriate authority to the effect that there is a split in the party as envisaged under the Rule 12(1A) of the Rules. He therefore, submits that the above symbol has to be alloted to the candidates sponsored by the State unit of the party headed by him. On this ground the 2nd respondent would contend that Ext.P5 is perfectly valid and proper. But at the same time, the 2nd respondent would contend that Exts.P3 and P5 are only communications addressed by the Secretary of the State Election Commission to the Electoral Officers of the State and there is no decision as contemplated under Rule 12(1A) of the Rules after hearing the parties concerned and therefore, neither Ext.P3 nor Ext.P5 can be considered as orders passed under Rule 12(1A) of the Rules.

3. The learned standing counsel for the State Election Commission would submit that there is a serious dispute as to who is entitled to represent the party at the national level and from the circumstances inferred from various communications received by the State Election Commission, they have come to the conclusion originally and provisionally that there is a split in the party and that is why Ext.P3 communication has been issued. Later on, they sought clarification from the Election Commission of India, which was answered by Ext.P6 communication, wherein the Election Commission of India informed the State Election Commission that, as per the existing records of the Commission, Sri.H.D.Deva Gowda is the president of the Janatha Dal (Secular). It is pursuant to such clarification that Ext.P5 order has been issued, since the 2nd respondent was claiming under the Presidentship of Sri.H.D.Deva Gowda.

4. I have considered the rival contentions in detail.

5. Although the standing counsel for the State Election Commission would want me to sustain Exts.P3 and P5 orders as one passed under Rule 12(1A) of the Rules, he could not satisfy me that there are such orders validly passed by the State Election Commission. Since, going by Exts.P3 and P5 they are evidently only communications issued by the Secretary of the State Election Commission to the Electoral Officers, he frankly submits that apart from Exts.P3 and P5, there are no formal orders of the Commission under Rule 12(1A). Further he also does not dispute that there was no hearing of the parties preceding any decision as contemplated in Rule 12(1A). Therefore, I am of opinion that neither Ext.P3 nor Ext.P5 can be relied upon as an order under Rule 12(1A) of the Kerala Panchayat Raj (Conduct of Election) Rules.

6. Even then, now that there are two sets of people before me claiming to be representing the real Janatha Dal (Secular), it is evident that there is a dispute as to who is entitled to represent the party in the State. It is not evident

from any records before me that the same has culminated in a split in the party so as to attract Rule 12(1A) of the Rules. But the circumstances prevailing would evidently point to the fact that the fact itself as to whether there is a split, which possibility is a distinct possibility or probability, has to be decided finally by a competent authority so that elections in the State can go on smoothly. Therefore, it is imperative that either the Election Commission of India or the State Election Commission takes a decision on the question as to whether there is a split in the party warranting interference by the State Election Commission under Rule 12(1A) of the Rules. I am of opinion that till such a decision is taken by the competent authority, the above said election symbol should not be alloted to anybody for contesting elections in Kerala for arriving at which opinion there is sufficient material from the very fact that two factions of the party are at loggerheads who have decided to have their own separate office bearers of the party at the national and State

level. Accordingly, there would be a direction to the 1st respondent to that effect. The learned Standing Counsel for the State Election Commission submits that this matter is under serious consideration in consultation with the Election Commission of India. This is recorded. This court hopes that a solution for the same would be found by the State Election Commission in consultation with the Election Commission of India within the shortest possible time.

Writ petition is disposed of as above.

sdk+ S.SIRI JAGAN, JUDGE